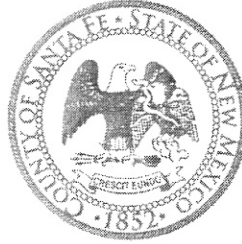


**Henry P. Roybal**  
*Commissioner, District 1*

**Anna Hansen**  
*Commissioner, District 2*

**Rudy N. Garcia**  
*Commissioner, District 3*



**Anna T. Hamilton**  
*Commissioner, District 4*

**Ed Moreno**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

## ***MEMORANDUM***

**DATE:** *January 9, 2019*

**TO:** *Board of County Commissioners*

**FROM:** *Bill Taylor, Procurement Manager, CPO*

**VIA:** *Katherine Miller, County Manager*  
*Stephanie S. Clarke, Finance Director*  
*Michael Kelley, Public Works Department Director*

**ITEM AND ISSUE: BCC Meeting January 29, 2019**

**Approval of the Design Build Institute Agreement No. 2019-0016-PW/BT Between Santa Fe County and Integrated Water Services Inc. in the Amount of \$7,750,000.00, Exclusive of NMGRT for Design-Build Project Delivery Services of the Santa Fe County Water Reclamation Facility; Authorizing the County Manager to Negotiate the Final Design and Execute the Contract and the Purchase Order(s) (Bill Taylor, Purchasing Division)**

**ISSUE:**

On July 30, 2018, Santa Fe County Purchasing Division issued RFP No. 2019-0016/BT for Design Build Project Delivery for the Santa Fe Water Reclamation Facility. Proposals were received August 27, 2018, from the following firms:

HDR  
RMCI, Inc./MolzenCorbin  
Integrated Water Services Inc./Souder Miller & Associates

All proposals were deemed to be responsive and responsible proposals. The Evaluation Committee convened on August 29, 2018 to rate and rank the proposals. In accordance to Section 13-1-119.1, NMSA 1978, all Respondents to the RFP were shortlisted.

Each shortlisted Respondent received Phase II Bridging Documents to submit Phase II design solutions and cost proposal. Oral Presentations were scheduled with each of the Shortlisted Firms and proposals were evaluated and ranked, based on their response to the criteria factors, together with the cost proposal. Integrated Water Services, Inc. was ranked highest in response and provided the best design solution for the facility.

### **BACKGROUND:**

The County operates the Quill Wastewater Treatment Facilities (QWWTF) to treat domestic wastewater from local neighborhoods and the nearby Penitentiary of New Mexico (PNM) and is actively evaluating connection of additional nearby service areas as part of the ongoing Sewer Master Plan.

The QWWTF requires significant improvements to meet the National Pollutant Discharge Elimination System (NPDES) requirements, provide adequate quality for beneficial use of reclaimed wastewater with no setback/access limits, plans for future expansion, and meet anticipated limits for land application of biosolids.

In June of 2017, the County contracted with HDR for a Preliminary Engineering Report (PER), that recommended that the QWWTF be replaced. The PER looked at two different processes but ultimately recommended a Membrane Bioreactor Wastewater Treatment Facility with a capacity of 0.50 Million Gallons per Day (MGD).

The QWWTF's maximum treatment capacity is 280,000 gallons per day (gpd) and has the ability to discharge treated effluent by land-applying effluent over 95 acres as permitted by the New Mexico Environment Department (NMED) groundwater discharge permit (GWDP) DP-234. The Current average daily flow is 124,000 gpd.

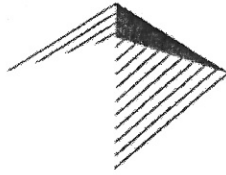
The QWWTF currently utilizes aerated lagoons and settling ponds for biological treatment and disinfection via chlorine. The treated effluent produced at the QWWTF does not consistently meet GWDP standards. The QWWTF has been maintained but due to its advanced age, deteriorating condition, inadequate technology, and limited potential for upgrades and/or repairs, it will be replaced. Significant improvements are necessary to meet the GWDP/NPDES requirements and increase capacity for future growth which can most cost-effectively be accomplished by replacement of the facility.

### **RECOMMENDATION:**

Approval of the Design Build Agreement No. 2019-0016-CMO/BT between Santa Fe County and Integrated Water Services, Inc. in the Amount of \$7,750,000.00, Exclusive of New Mexico Gross Receipts Tax for Design-Build Project Delivery Services of the Santa Fe County Water Reclamation Facility, and authorizing the County Manager to negotiate final design and execute the Agreement and purchase Order(s).

**D B I A**

ent No. 2019-0016-CMO/BT



**DESIGN-BUILD**  
INSTITUTE OF AMERICA

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# **STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - LUMP SUM**

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**Document No. 525**

First Edition, 1998

© Design-Build Institute of America

Washington, DC

# INSTRUCTIONS

For DBIA Document No. 525 Standard Form of Agreement Between Owner and Design-Builder - Lump Sum (1998 Edition)

## Checklist

Use this Checklist to ensure that the Agreement is fully completed and all exhibits are attached.

_____	Page 1	Owner's name, address and form of business
_____	Page 1	Design-Builder's name, address and form of business
_____	Page 1	Project name and address
_____	Section 2.1.9	Identify other Contract Documents
_____	Section 4.3.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.2.1	Complete blanks for calendar days
_____	Section 5.2.2	Insert any interim milestones (optional)
_____	Section 5.4	Complete blanks for liquidated damages
_____	Section 5.5	Complete blanks for early completion bonus
_____	Section 6.1	Complete blanks for Contract Price
_____	Section 6.2	Insert markups for changes
_____	Section 7.1.1	Complete blanks for day of month
_____	Section 7.2.1	Complete blanks for retention percentage
_____	Section 7.4	Complete blanks for interest rate
_____	Section 8.1.3	Choose overhead/profit method for termination for convenience
_____	Section 8.2.1	Complete blanks for percentages
_____	Section 8.2.2	Complete blanks for percentages
_____	Section 9.1.1	Insert Owner's Senior Representative's name, etc. (optional)
_____	Section 9.1.2	Insert Owner's Representative's name, etc. (optional)
_____	Section 9.2.1	Insert Design-Builder's Senior Representative's name, etc. (optional)
_____	Section 9.2.2	Insert Design-Builder's Representative's name, etc. (optional)
_____	Section 10.1	Attach Insurance Schedule
_____	Section 10.2	Insert amount and conditions of bonds or other security
_____	Section 11.1	Insert any other provisions (optional)
_____	Page 8	Owner's and Design-Builder's execution of the Agreement

## General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (ADBIA®) has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that



**Agreement No. 2019-0016-CMO/BT**

No.	Subject	Instruction
		risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce up to five copies of completed original Documents for use on a particular project. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is prohibited.
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. Also, in some instances, these Documents must be modified to indicate the selection of a particular contract term.</p> <p>Any modifications to these Documents should be underlined to distinguish them from original language. Any handwritten modifications should be initialed by the parties. To delete provisions, strike through the printed words so that original language remains legible. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms-familiarity with the terms.</p> <p>Additions to DBIA Document No. 535, <i>Standard Form of General Conditions of Contract Between Owner and Design-Builder</i>, 1998 Edition, ("General Conditions of Contract") shall be in the form of written Supplementary Conditions. These are referenced in Section 2.1.3 of DBIA Document No. 525, <i>Standard Form of Agreement Between Owner and Design-Builder - Lump Sum</i>, 1998 Edition, ("DBIA Document No. 525") and DBIA Document No. 530, <i>Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price</i>, 1998 Edition, ("DBIA Document No. 530").</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

**Specific Instructions**

Section	Title	Instruction
General	Purpose of this document	<p>DBIA Document No. 525 ("Agreement") should be used only when the parties intend that Owner pay Design-Builder a lump sum fixed price for the completion of all design and construction services. There will be greater mutual understanding and cooperation if the lump sum is established based on Owner's Project Criteria that are well defined.</p> <p>If there is uncertainty about Owner's Project Criteria, or it remains to be developed by Owner and Design-Builder jointly, a cost-plus/guaranteed maximum price ("GMP") contracting approach may be more suitable. In such case, the parties should use DBIA Document No. 530.</p>
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.
General	Related Documents	This Agreement shall be used in conjunction with the General Conditions of Contract. Other related Contract Documents are listed in Article 2 of this Agreement.

**Agreement No. 2019-0016-CMO/BT**

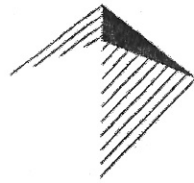
Section	Title	Instruction
General	Date	On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.
General	Parties: Owner and Design-Builder	On Page 1 enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.
2.1.5	Construction Documents	After execution of the Agreement, and consistent with the requirements of Section 2.4 of the General Conditions of Contract, Design-Builder will prepare Construction Documents subject to Owner's review and approval. DBIA attaches great importance to the process for preparing Construction Documents and accordingly believes the Construction Documents should take precedence over Owner's Project Criteria and Design Builder's Proposal, including any Deviation List.
2.1.6	Design-Builder's Deviation List	Prior to the execution of this Agreement, Design-Builder will have submitted its Proposal based on Owner's Project Criteria. To avoid ambiguities or conflicts between Owner's Project Criteria and Design-Builder's Proposal, Design-Builder's Proposal shall specifically list any deviations from Owner's Project Criteria. Design-Builder's Deviation List shall, if accepted by Owner, become a Contract Document and shall have precedence over Owner's Project Criteria.
3.1	Order of Precedence	The Contract Documents are listed in Section 2.1 in the order of their precedence. This hierarchy of documents reflects DBIA's belief that Owner's Project Criteria should take precedence over Design-Builder's Proposal, unless the Proposal calls attention to deviations from the program in Design-Builder's Deviation List. However, the Construction Documents subsequently developed by Design-Builder and approved by Owner should take precedence over the Deviation List (if any); Owner's Project Criteria, and the Proposal.
3.2	Definitions	Terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.
4.1	Work Product	This Agreement provides that in all circumstances Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product according to the terms and circumstances described in Sections 4.2, 4.3, 4.4 and 4.5.
4.2	Owner's Limited License Upon Payment in Full	Design-Builder shall grant Owner, at Owner's sole risk, a limited license to use the Work Product at the completion of the Work in connection with Owner's occupation of the Project.
4.3	Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate	Owner should not use the Termination for Convenience Clause to obtain Design-Builder's valuable design concepts, and then seek lower bids from other design-builders. Therefore, where Owner terminates this Agreement for its convenience, and then decides to complete the Project with its own or third party forces, Design-Builder shall grant Owner a limited license to use Design-Builder's Work Product to complete and subsequently occupy the Project at Owner's sole risk, provided Owner pays Design-Builder all amounts due Design-Builder as required by the Contract Documents, including paying Design-Builder an additional sum per Section 4.3.2 for the use of the Work Product. In the event Design-Builder elects to terminate this Agreement for cause, for reasons set forth in Section 11.4 of the General Conditions of Contract, these same conditions apply to Owner's use of the Work Product.
4.3.2	Additional Compensation	To minimize disputes, the parties should negotiate prior to execution of the Agreement the amount Owner shall pay Design-Builder for the use of Design-Builder's Work Product in the event Owner terminates this Agreement for its convenience or Design-Builder elects to terminate this Agreement for cause. Enter this amount.

**Agreement No. 2019-0016-CMO/BT**

Section	Title	Instruction
4.4	Owner's Limited License Upon Design-Builder's Default	If Design-Builder is properly terminated for default, Owner is granted a limited license to use the Work Product, at Owner's sole risk, to complete and occupy the Project without the payment of an additional sum for the use of the Work Product.
4.5	Owner's Indemnification for Use of Work Product	Owner's use of the Work Product shall be at its sole risk, and Owner must agree to defend, indemnify and hold harmless Design-Builder and anyone working by or through Design-Builder, including Design Consultants of any tier.
5.1	Date of Commencement	Design-Builder's obligation to commence work is triggered by its receipt of a Notice to Proceed unless the parties mutually agree otherwise.
5.2.1	Substantial Completion of the Entire Work	Enter the calendar days duration by which Substantial Completion has to be achieved.
5.2.2	Interim Milestones	It may be that some portions of the Work must be completed in phases or within a prescribed period of time to accommodate Owner's needs. The parties may, at their option, identify these portions of the Work to be completed prior to Substantial Completion of the entire Work. Enter the calendar days, starting from the Date of Commencement, for achieving Substantial Completion of these identified portions of the Work. If these portions of the Work are required to be substantially completed by certain milestone dates, enter those dates.
5.4	Liquidated Damages	<p>Owner should make a good faith evaluation of the amount that is reasonably necessary to compensate it for delay. Owner should not establish liquidated damages to penalize Design-Builder.</p> <p>Section 5.4 establishes a grace period between the Scheduled Substantial Completion Date and the assessment of liquidated damages in order to prevent disputes as to which party bears responsibility for only a few days of delay. The parties should enter the calendar days that may pass following the Scheduled Substantial Completion Date before liquidated damages will be assessed.</p> <p>Section 5.4 must also be modified if liquidated damages are applicable to any interim dates set forth in Section 5.2.2.</p>
5.5	Early Completion Bonus	<p>If the Project economics justify liquidated damages, then it is appropriate to couple these liquidated damages with an early completion bonus. The parties should enter the number of calendar days prior to the Scheduled Substantial Completion Date that will set the Bonus Date. Also, enter the amount of the bonus to be paid per day that will allow Owner to share with Design-Builder the economic benefits of early completion.</p> <p>Section 5.5 should also be modified if an early completion bonus is applicable to any interim dates set forth in Section 5.2.2.</p>
6.1	Contract Price	Enter the lump sum price Owner will pay Design-Builder for the Scope of Work. The Contract Price should compensate Design-Builder for the services it provides and the risk it assumes in providing single point responsibility to Owner.
6.2	Markups for Changes	Enter the markups agreed upon by Design-Builder and Owner to be used for pricing Changes to the Work. Prior to negotiating or agreeing to these markups, both parties should familiarize themselves with Article 9 of the General Conditions of Contract, Changes to the Contract Price and Time.
7.1.1	Progress Payments	Enter the day of the month when Design-Builder shall submit its Application for Payment.

**Agreement No. 2019-0016-CMO/BT**

Section	Title	Instruction
7.2.1	Retainage	Enter the percentage Owner will retain from Progress Payments to Design-Builder until fifty percent (50%) of the Work is completed. Owner should recognize that it creates undue hardship to hold retainage on Subcontractors that have completed their work early in the Project. Owner should accordingly consider releasing retainage on Subcontractors that complete work early in the Project, providing that these Subcontractors have satisfactorily performed their portion of the Work.
7.4	Interest	The parties should enter the rate at which interest will accrue on Design-Builder's payments if unpaid five (5) days after due. Late payment creates a hardship for Design-Builder, its Design Consultants and Subcontractors.
8.1.3	Termination for Convenience: Overhead and Profit	The parties should choose prior to execution of the Agreement the method that will be used to determine overhead and profit paid to Design-Builder in the event Owner terminates Design-Builder for its convenience. The parties may choose to set percentage rates for overhead and profit prior to execution of the Agreement, or may choose to determine reasonable sums to be paid for overhead and profit at the time of the termination. If the parties choose to set overhead and profit rates prior to execution of the Agreement, the percentages should be entered in Section 8.1.3.
8.2	Termination for Convenience: Additional Payments	Although it is important for Owner to have a process for terminating this Agreement for convenience, the process must consider the interests of Design-Builder. If Owner terminates this Agreement for its own convenience, compensating Design-Builder for its costs will not be adequate because Design-Builder will have committed its resources for a small amount of revenue. Therefore, in addition to the overhead and profit paid in Section 8.1, Owner shall pay Design-Builder an additional sum, calculated as a percentage of the remaining balance of the Contract Price. Enter the percentages Owner shall pay Design-Builder if Owner terminates this Agreement for its own convenience prior to or after the start of construction.
8.3	Termination for Convenience: Owner's Use of Work Product	Owner should not use the Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3.
Article 9	Representatives of the Parties	<p>Enter the name, title, address and telephone number of Owner's Senior Representative and Owner's Representative at Sections 9.1.1 and 9.1.2, respectively.</p> <p>Enter the name, title, address and telephone number of Design-Builder's Senior Representative and Design-Builder's Representative at Sections 9.2.1 and 9.2.2, respectively.</p> <p>The parties can elect to establish Representatives during the performance of the Project rather than at the time of execution of this Agreement. If Representatives are identified after execution of the Agreement, an appropriate amendment should be made to the Agreement at the time these individuals are designated.</p>
10.1	Insurance	Attach an Insurance Schedule setting forth in detail the insurance coverages required for the Project. Parties are advised to familiarize themselves with the terms of Article 5 of the General Conditions of Contract, Insurance and Bonds, and to consult their insurance advisor. If the parties contemplate using "wrap-up" type insurance policies, these coverages must be detailed in the Insurance Schedule and Article 5 of the General Conditions of Contract must be modified accordingly.
10.2	Bonds	Enter the type and amount of bonds or other performance security required for the Project. Where bonding is not required by statute, Owner may want to evaluate the project risks versus the bonding costs in deciding what type of performance security to require.
11.1	Other Provisions	Insert any other provisions.

**DESIGN-BUILD**  
INSTITUTE OF AMERICA

## Standard Form of Agreement Between Owner and Design-Builder – Lump Sum

*This document has important legal consequences. Consultation with  
an attorney is recommended with respect to its completion or modification.*

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This **AGREEMENT** is made as of the \_\_\_\_\_ day of  
in the year of 2019, by and between the following parties, for services in connection with the Project identified below.

**OWNER:**

Santa Fe County  
102 Grant Avenue  
Santa Fe, New Mexico 87504

**DESIGN-BUILDER:**

Integrated Water Services, Inc.  
Attention: Dave Patton, President/CEO  
PO Box 774565  
Steamboat Springs, CO, 80477

**PROJECT:**

Santa Fe County Water Reclamation Facility (SFCWRF)  
Hwy 14, State Penitentiary  
Santa Fe, New Mexico

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

## Article 1 Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

## Article 2 Contract Documents

2.1 The Contract Documents are comprised of the following:

- .1 All written modifications, amendments and change orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (1998 Edition) ("General Conditions of Contract");
- .2 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder;
- .3 Written Supplementary Conditions, if any, to the General Conditions of Contract;
- .4 The General Conditions of Contract;
- .5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;
- .6 Design-Builder's Deviation List, if any, contained in Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;
- .7 Owner's Project Criteria;
- .8 Design-Builder's Proposal, except for the Deviation List, submitted in response to Owner's Project Criteria; and
- .9 The following other documents, if any:  
**Exhibit A – Major Work Items; Final Schedule of Values to be provided after NMED approval and design specifications and pricing can be completed.**



### Article 3

#### **Interpretation and Intent**

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.2 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.3 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

### Article 4

#### **Ownership of Work Product**

4.1 **Work Product.** All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including the copyrights thereto.

4.2 **Owner's Limited License Upon Payment in Full.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall transfer to Owner and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of the Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier.

4.3 **Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates the Project for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, conditioned on the following:

- .1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party; and
- .2 Owner agrees to pay Design-Builder the additional sum of *Six Million Seven Hundred Ninety Five Thousand Two Hundred Dollars and zero cents (\$6,795,200)* as compensation for the right to use the Work Product in accordance with this Article 4 if Owner resumes the Project through its employees, agents, or third parties.

4.4 **Owner's Limited License Upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract and (i) it is determined that Design-Builder was in default and (ii) Owner has fully satisfied all of its obligations under the Contract Documents, Design-

## Agreement No. 2019-0016-CMO/BT

Builder shall grant Owner a limited license to use the Work Product in connection with Owner's completion and occupancy of the Project. This limited license is conditioned on Owner's express understanding that its use of the Work Product is at Owner's sole risk and without liability or legal exposure to any Indemnified Party.

~~4.5 Owner's Indemnification for Use of Work Product. If Owner uses the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use of the Work Product.~~

## Article 5 Contract Time

**5.1 Date of Commencement.** The Work shall commence within seven (7) working days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

### **5.2 Substantial Completion and Final Completion**

**5.2.1** Substantial Completion of the entire Work shall be achieved no later than March 27, 2020 (412) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

**5.2.2** Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: **EXHIBIT B:** *[ NMED approval of initial design is a critical path task that may affect substantial completion date. Owner may adjust substantial completion date, depending on the timeline to receive NMED design approval.]*

**5.2.3** Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable.

**5.2.4** All of the dates set forth in this Article 5 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

**5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**5.4 Liquidated Damages.** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by March 27, 2020, (7) days after the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay Owner Five Hundred Dollars (\$ 500.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion.



## Agreement No. 2019-0016-CMO/BT

**5.5 Early Completion Bonus.** If Substantial Completion is attained on or before N/A (    N/A    ) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of             N/A             Dollars (\$     N/A    ) for each day that Substantial Completion is attained earlier than the Bonus Date.

### Article 6 Contract Price

**6.1 Contract Price.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of Seven Million Seven Hundred Fifty Thousand Dollars (\$7,750,000.00) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**6.2 Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes: *Revisions to original drawings; plans and/or specifications*

### Article Procedure for Payment

#### **7.1 Progress Payments**

**7.1.1** Design-Builder shall submit to Owner on the first (1st) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

**7.1.2** Owner shall make payment within ten (21) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

#### **7.2 Retainage on Progress Payments**

**7.2.1** ~~Owner will retain \_\_\_\_\_ percent ( \_\_\_\_\_ %) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been completed by Design-Builder, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.~~

**7.2.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

## Agreement No. 2019-0016-CMO/BT

7.4 **Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of One and one-half percent (1.5 %).

7.5 **Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment.

### Article 8

#### Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

- .1 All Work executed and for proven loss, cost or expense in connection with the Work;
- .2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and
- .3 *(Choose one of the following:)*

The fair and reasonable sums for overhead and profit on the sum of items .1 and .2 above.

*or*

Overhead and profit in the amount of \_\_\_\_\_ percent (\_\_\_\_\_% ) on the sum of items .1 and .2 above.

8.2 ~~In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:~~

- ~~.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid \_\_\_\_\_ percent (\_\_\_\_\_% ) of the remaining balance of the Contract Price.~~
- ~~.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid \_\_\_\_\_ percent (\_\_\_\_\_% ) of the remaining balance of the Contract Price.~~

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof.

*(The following Article 9 should be used only if the Owner and Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.)*

**Article 9**

**Representatives of Parties**

**9.1 Owner's Representatives**

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

**LeRoy Alvarado, Project Manager**  
424 NM 599 Frontage Rd.  
Santa Fe, NM 87504  
(505) 992-9835

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

**LeRoy Alvarado, Project Manager**  
424 NM 599 Frontage Rd.  
Santa Fe, NM 87504  
(505) 992-9835

**9.2 Design-Builder's Representatives**

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

**Scott Kaminky, Project Manager**  
Integrated Water Services, Inc.  
PO Box 774565  
Steamboat Springs, CO 80477  
(303)-653-1167

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

**Scott Kaminky, Project Manager**  
Integrated Water Services, Inc.  
PO Box 774565  
Steamboat Springs, CO 80477  
(303)-653-1167

**Article 10**

**Bonds and Insurance**

**10.1 Insurance.** Design-Builder shall procure in accordance with Article 5 of the General Conditions of Contract the following insurance coverages:

Commercial Liability	\$2,000,000 per occurrence/aggregate
----------------------	--------------------------------------

**Agreement No. 2019-0016-CMO/BT**

Auto Liability	\$2,000,000 per occurrence/aggregate
Workers Comp.	\$1,000,000 per accident
Professional Liability	\$1,000,000

*Insurance Certificates are attached.*

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security for the full value of the Agreement:

**\$7,750,000.00**

**Article 11**  
**Other Provisions**

**11.1** Other provisions, if any, are as follows: *NA*

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

**OWNER:**

\_\_\_\_\_  
*(Name of Owner)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

**DESIGN-BUILDER:**

\_\_\_\_\_  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

## Exhibit A

Major Work Item Amounts		
Bonding, Mobilization and Insurance (IWS standard)	\$542,900	
Engineering/Permitting	\$909,800	
Yard Pipe	\$231,700	
Site Work/Grading	\$66,600	
Process Basin Earthwork	\$77,900	
Process Basin Concrete	\$997,100	
Main Plant Earthwork and Slab	\$198,200	
Main Plant Bldg	\$713,200	
Main Bldg Process	\$3,178,900	
Electrical	\$728,700	
Solar Array (allowance)	<u>\$105,000</u>	
<b>Grand Total</b>		<b>\$7,750,000</b>



# Exhibit B

SFCWRF Agreement Project Schedule

ID	Task Name	Duration	Start	Finish	Qtr 1, 2019	Qtr 2, 2019	Qtr 3, 2019	Qtr 4, 2019	Qtr 1, 2020	Qtr 2, 2020
1	Notice To Proceed / Date of Commencement	1 day	Fri 2/8/19	Fri 2/8/19	Jan	Feb	Mar	Apr	May	Jun
2										
3	Engineering & Design	150 days	Mon 2/11/19	Fri 9/6/19						
4	30% Design	12 wks	Mon 2/11/19	Fri 5/3/19						
5	60% Design	8 wks	Mon 5/6/19	Fri 6/28/19						
6	90% Design	8 wks	Mon 7/1/19	Fri 8/23/19						
7	Final Design	2 wks	Mon 8/26/19	Fri 9/6/19						
8										
9	Major Equipment Procurement	201 days	Mon 4/15/19	Mon 1/20/20						
10	Zenon - acceptance of PO	1 day	Mon 4/15/19	Mon 4/15/19						
11	Zenon - submission of drawings	8 wks	Tue 4/16/19	Mon 6/10/19						
12	Zenon - drawings approval	2 wks	Tue 6/11/19	Mon 6/24/19						
13	Zenon - equipment manufacturing	26 wks	Tue 6/25/19	Mon 12/23/19						
14	Zenon - equipment shipping	2 wks	Tue 12/24/19	Mon 1/6/20						
15	Zenon - O&M manuals	2 wks	Tue 1/7/20	Mon 1/20/20						
16										
17	Construction	37 wks	Mon 7/1/19	Fri 3/13/20						
18										
19	Startup	2 wks	Mon 3/16/20	Fri 3/27/20						
20										
21	Substantial Completion	1 day	Fri 3/27/20	Fri 3/27/20						
22										
23	Punch List and Project Closeout	4 wks	Mon 3/30/20	Fri 4/24/20						

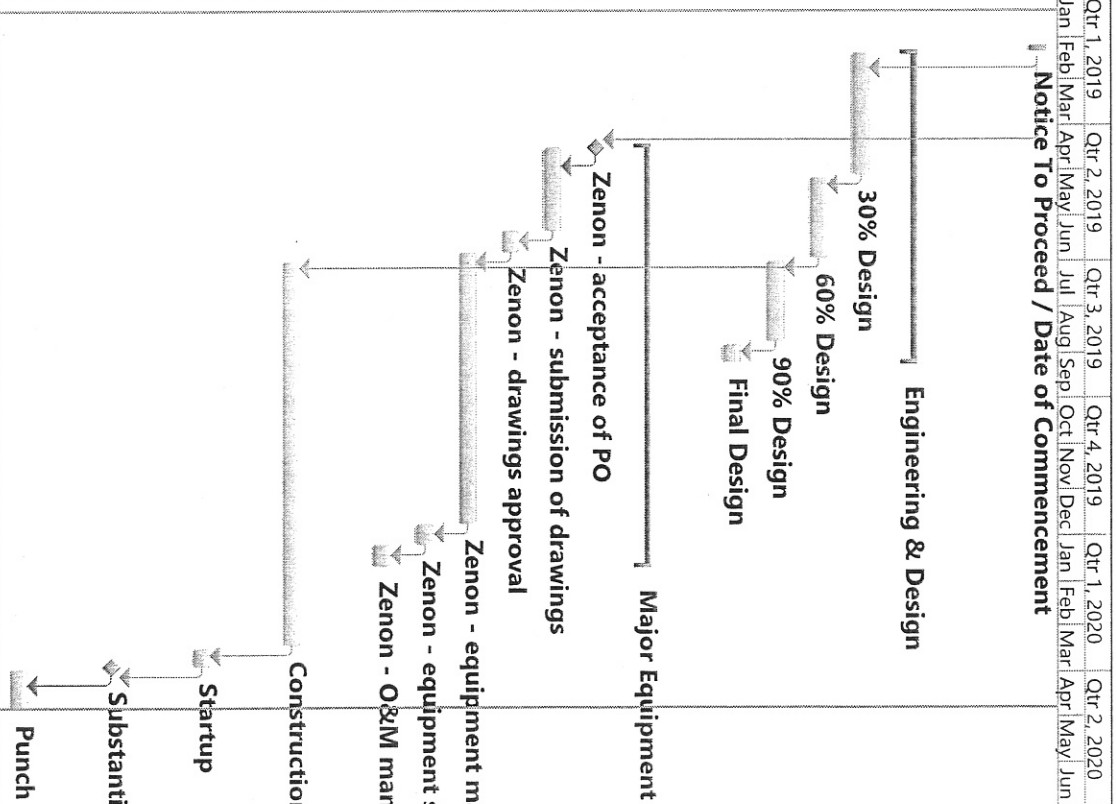






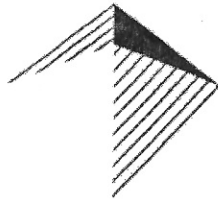
Exhibit B  
Santa Fe County Water Reclamation Facility  
Integrated Water Services Project Schedule Major Milestones

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<u>ACTIVITY</u>	<u>MILESTONE</u>
1. Notice to Proceed ("NTP") / Date of Commencement	February 8, 2019 Planned
2. Engineering & Design:	
o 30% Design / NM State Design Review	NTP +12 Weeks
o 60% Design	NTP +20 Weeks
o 90% Design	NTP +28 Weeks
o Final Design	NTP +30 Weeks
3. Major Equipment Procurement:	
o Zenon – acceptance of PO	NTP +9 Weeks
o Zenon – submission of drawings	NTP +17 Weeks
o Zenon – drawings approval	NTP +19 Weeks
o Zenon – equipment manufacturing	NTP +45 Weeks
o Zenon – equipment shipping	NTP +47 Weeks
o Zenon – O&M manuals	NTP +49 Weeks
4. Construction	NTP +56 Weeks
5. Startup & Project Closeout	NTP +63 Weeks



**DBIA**



**DESIGN-BUILD**  
INSTITUTE OF AMERICA

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# **STANDARD FORM OF GENERAL CONDITIONS OF CONTRACT BETWEEN OWNER AND DESIGN-BUILDER**

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**Document No. 535**

First Edition, 1998

© Design-Build Institute of America

Washington, DC

# INSTRUCTIONS

For DBIA Document No. 535 Standard Form of General Conditions of Contract  
Between Owner and Design-Builder (1998 Edition)

## General Instructions

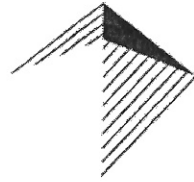
No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (ADBIA®) has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce up to five copies of completed original Documents for use on a particular project. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is prohibited.
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. Also, in some instances, these Documents must be modified to indicate the selection of a particular contract term.</p> <p>Any modifications to these Documents should be underlined to distinguish them from original language. Any handwritten modifications should be initialed by the parties. To delete provisions, strike through the printed words so that original language remains legible. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms—familiarity with the terms.</p> <p>Additions to DBIA Document No. 535, <i>Standard Form of General Conditions of Contract Between Owner and Design-Builder</i>, 1998 Edition, ("General Conditions of Contract") shall be in the form of written Supplementary Conditions. These are referenced in Section 2.1.3 of DBIA Document No. 525, <i>Standard Form of Agreement Between Owner and Design-Builder C Lump Sum</i>, 1998 Edition, (ADBIA Document No. 525®) and DBIA Document No. 530, <i>Standard Form of Agreement Between Owner and Design-Builder C Cost Plus Fee with an Option for a Guaranteed Maximum Price</i>, 1998 Edition, (ADBIA Document No. 530®).</p>

No.	Subject	Instruction
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

### Specific Instructions

Section	Title	Instruction
General	Purpose of this Document	<p>The General Conditions of Contract provide the terms and conditions under which the Work of the Project will be performed.</p> <p>This document accompanies DBIA Document No. 525 and DBIA Document No. 530 (each referred to herein generally as "agreement"). It may also be incorporated by reference into other related agreements, as between the Design-Builder and the Design Consultant, and the Design-Builder and the Subcontractor.</p>
General	Checklist	<p>The following Sections reference documents that are to be attached to the Agreement:</p> <p>Section 2.3.1 Performance Standard Requirements  Section 3.5.1 Owner's Permit List  Section 9.4.1 Unit Prices</p>
2.2.1	Design Professional Services	The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.
2.3.1	Standard of Care for Design Professional's Services	Design-Builder's obligation is to deliver a design that meets prevailing industry standards. However, DBIA believes that if Owner has identified specific performance standards that can be objectively measured, Design-Builder is obligated to design the Project to satisfy these standards. To avoid any confusion and to ensure that the parties fully understand what their obligations are, the specific performance standards must be set forth in an exhibit to the Agreement entitled "Performance Standard Requirements."
3.5.1	Government Approvals and Permits	Design-Builder is responsible for obtaining all necessary permits, approvals and licenses, except to the extent specific permits, approvals, and licenses are set forth in an Owner's Permit List, which must be attached as an exhibit to the Agreement. The parties, prior to execution of the Agreement, should discuss which permits, approvals and licenses need to be obtained for the Project, and which party is in the best position to do so.
5.1.1	Design-Builder's Insurance Requirements	Design-Builder is obligated to provide insurance coverage from insurance carriers that meet the criteria set forth in the Insurance Schedule attached to Section 10.1 of the Agreement.
5.1.2	Coverage Amounts and Durations	Design-Builder's liability insurance must be written for the amounts set forth in the Insurance Schedule made part of the Agreement and must include completed operations insurance for the period of time set forth in the Insurance Schedule.
5.1.3	Exclusions to Design-Build	Parties are advised that standard liability insurance policies may contain exclusions for the design-build delivery method. This Section 5.1.3 requires that any such exclusions be deleted from the policy.
5.1.4	Errors and Omissions Insurance	This Section 5.1.4 does not require the purchase of errors and omissions insurance by the Design-Builder or its Design-Consultant. Should Owner, after its analysis of the risk factors involved, require this insurance, the coverage required shall be as set forth in the Insurance Schedule attached at Section 10.1 of the Agreement. To the extent such coverage is required, any exclusion for the design-build delivery method should be deleted.

Section	Title	Instruction
5.4.1	Bonds and Other Performance Security	Design-Builder is only obligated to provide bonds or other forms of performance security to the extent called for in Section 10.2 of the Agreement.
9.4.1.1	Contract Price Adjustments	Unit prices, if established, shall be attached pursuant to Article 2 of the Agreement.
9.4.3	Payment/ Performance of Disputed Services	When Owner disputes Design-Builder's entitlement to a change order or disagrees with Design-Builder regarding the scope of Work, and nevertheless expects Design-Builder to perform the services, Design-Builder's cash flow and ability to complete the Work will be hampered if Owner fails to pay Design-Builder for the disputed services. This Section provides a balanced approach whereby Design-Builder is required to perform the services, but Owner is required to pay fifty percent (50%) of Design-Builder's reasonable estimated direct costs of performing such services until the dispute is settled. By so doing, Owner does not forfeit its right to deny total responsibility for payment, and Design-Builder does not give up its right to demand full payment. The dispute shall be resolved according to Article 10.
Article 10	Contract Adjustments and Disputes	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. The General Conditions of Contract provides for the parties' Representatives and Senior Representatives to attempt to negotiate the dispute or disagreement. If this attempt fails, the dispute shall be submitted to mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be submitted to binding arbitration.
10.3.4	Arbitration	The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports this "loser pays" provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.
10.4	Duty to Continue Performance	Pending the resolution of any dispute or disagreement, both Owner and Design-Builder shall continue to perform their respective duties under the Contract Documents, unless the parties provide otherwise in the Contract Documents.
10.5	Consequential Damages	DBIA believes that it is inappropriate for either Owner or Design-Builder to be responsible to the other for consequential damages arising from the Project. This limitation on consequential damages in no way restricts, however, the payment of liquidated damages, if any, under Article 5 of the Agreement.
11.4	Design-Builder's Right to Terminate for Cause	If Design-Builder properly terminates the Agreement for cause, it shall recover from Owner in the same way as if Owner had terminated the Agreement for convenience under Article 8 of the Agreement. Owner shall pay to Design-Builder its costs, reasonable overhead and profit on the costs, and an additional payment based on a percentage of the remaining balance of the Contract Price, all as more fully set forth in Article 8 of the Agreement.



**DESIGN-BUILD**  
INSTITUTE OF AMERICA

# Standard Form of General Conditions of Contract Between Owner and Design-Builder

*This document has important legal consequences. Consultation with  
an attorney is recommended with respect to its completion or modification.*

## Table of Contents

Article 1: General .....	6
Article 2: Design-Builder's Services and Responsibilities .....	6
Article 3: Owner's Services and Responsibilities .....	10
Article 4: Hazardous Conditions and Differing Site Conditions .....	11
Article 5: Insurance and Bonds .....	12
Article 6: Payment .....	14
Article 7: Indemnification .....	16
Article 8: Time .....	17
Article 9: Changes to the Contract Price and Time .....	17
Article 10: Contract Adjustments and Disputes .....	19
Article 11: Stop Work and Termination for Cause .....	20
Article 12: Miscellaneous .....	22

## **Article 1**

### **General**

#### **1.1 Mutual Obligations**

**1.1.1** Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

#### **1.2 Basic Definitions**

**1.2.1** *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder C Lump Sum* (1998 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder C Cost Plus Fee with an Option for a Guaranteed Maximum Price* (1998 Edition).

**1.2.2** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**1.2.3** *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

**1.2.4** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**1.2.5** *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (1998 Edition).

**1.2.6** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

## **Agreement No. 2019-0016-CMO/BT**

**1.2.7** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

**1.2.8** *Site* is the land or premises on which the Project is located.

**1.2.9** *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

**1.2.10** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.11** *Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

**1.2.12** *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

## **Article 2**

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services**

**2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.



**2.1.2** Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

**2.1.3** Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

## **2.2 Design Professional Services**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

## **2.3 Standard of Care for Design Professional Services**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Work, which standards are to be set forth in an exhibit to the Agreement entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

## **2.4 Design Development Services**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

**2.4.3** Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

**2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## **2.5 Legal Requirements**

**2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**2.5.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits**

**2.6.1** Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## **2.7 Design-Builder's Construction Phase Services**

**2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

**2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.7.5** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash,

construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **2.8 Design-Builder's Responsibility for Project Safety**

**2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

**2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard

## **Agreement No. 2019-0016-CMO/BT**

against injury, losses, damages or accidents resulting from their performance of the Work.

## **2.9 Design-Builder's Warranty**

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work**

**2.10.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents.

**2.10.2** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

**2.10.3** The one year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

### **Article 3**

## **Owner's Services and Responsibilities**

### **3.1 Duty to Cooperate**

**3.1.1** Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

**3.1.2** Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

### **3.2 Furnishing of Services and Information**

**3.2.1** Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

- .1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- .2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- .3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

**.4** A legal description of the Site;

**.5** To the extent available, as-built and record drawings of any existing structures at the Site; and

**.6** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

**3.2.2** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

### **3.3 Financial Information**

**3.3.1** At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

**3.3.2** Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

### **3.4 Owner's Representative**

**3.4.1** Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual